

*FILED
IN CLERK'S OFFICE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS*

2003 DEC 23 P 12:42 X

FAIRHAVEN SHIPYARD & MARINA, INC., DISTRICT OF MASSACHUSETTS	RECEIPT # _____
Plaintiff,	AMOUNT \$ <u>150</u>
vs.	SUMMONS ISSUED <u>2</u>
F/V REALITY (EX F/V MELISSA VANESSA) (O.N. No. 619655), her engines, tackle, apparel, appurtenances, etc., <i>in rem</i> ,	LOCAL RULE 4.1 _____
Defendant.	WAIVER FORM _____
	MCF ISSUED <u>98</u>
	BY DPTY. CLK. <u>98</u>
	DATE <u>12.23.03</u>
	CIVIL ACTION NO.
	03 12594 RWZ
	MAGISTRATE JUDGE <u>Chen</u>
	VERIFIED COMPLAINT IN ADMIRALTY
	X

NOW COMES, plaintiff, FAIRHAVEN SHIPYARD & MARINA, INC., by its attorney, complaining of the above-named defendant, proceeds *in rem* against the F/V REALITY (*ex* F/V MELISSA VANESSA) (O.N. No. 619655), her engines, tackle, apparel, appurtenances, fishing licenses, fishing history, to enforce a maritime lien against said vessel, and alleges, upon information and belief, as follows:

The Parties

1. Plaintiff, FAIRHAVEN SHIPYARD & MARINA, INC., (hereinafter referred to as "FAIRHAVEN SHIPYARD"), is a corporation duly organized and existing under the laws of the State of Massachusetts, with its principal place of business located at 50 Fort Street, Fairhaven, Massachusetts. At all time material hereto, FAIRHAVEN SHIPYARD did, and still does, business as a marine repair and storage facility and holds a valid maritime lien for "necessaries" upon the F/V REALITY (*ex* F/V MELISSA VANESSA)(O.N. No. 619655)(hereinafter referred to as the "Vessel").
2. Defendant Vessel is a commercial fishing vessel that, upon information and belief, is owned either by REALTY FISHING CORP of 113 MacArthur Drive, New Bedford,

Massachusetts and/or Mr WAYNE E. FRYE, JR., of 60 Seaview Ave, Fairhaven, Massachusetts (jointly hereinafter referred to as "FRYE") and documented under the laws of the United States, bearing Official Number 619655. The Vessel being a steel hulled vessel, is now located ashore at an upland storage facility at FAIRHAVEN SHIPYARD in Fairhaven, Massachusetts, and during the pendency of this action, will be within the jurisdiction of this Honorable Court.

Jurisdiction

3. This action is one of which the district courts have original jurisdiction under the provisions of Title 28, United States Code, section 1333 in that it is a civil action arising under Title 46, United States Code, sections 31341, *et seq*, more commonly referred to as the Federal Maritime Lien Act, and the general maritime law of the United States, and is otherwise an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Plaintiff specifically invokes the special relief provided by Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims for the *in rem* arrest of defendant Vessel.

Factual Allegations

4. On or about June 2003, FRYE requested that the plaintiff perform repair work on the Vessel. In late June 2003 the Vessel was moved to the plaintiff's facility and repairs commenced in mid-July 2003. During the repair process the plaintiff dispatched weekly invoices to Frye. Plaintiff suspended work on the vessel in mid-September 2003 after FRYE advised the plaintiff that there were not sufficient funds to pay for the repairs that had been made to date and that needed to be further made. The Vessel remains at the facility. At the time of making both of the agreements, the Vessel was in navigation.

Additionally, the plaintiff and FRYE also agreed that laydays would be charged by the plaintiff for storage of the vessel.

5. Pursuant to said agreement, upon the order and request of FRYE, FAIRHAVEN SHIPYARD furnished certain services and repairs and supplied certain materials and supplies to the Vessel. FAIRHAVEN SHIPYARD has also stored the vessel on land as requested by FRYE.
6. FRYE has failed, neglected, and refused to pay for the fair and reasonable value of goods and services provided by FAIRHAVEN SHIPYARD which are now due and owing to plaintiff on account thereof.
7. FAIRHAVEN SHIPYARD has performed all conditions on its part to be performed under the aforesaid agreement.
8. By reason of the foregoing premises, FAIRHAVEN SHIPYARD has sustained damages in the principal amount of \$24,053.20, excluding interest, as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

Cause of Action

(Enforcement of Maritime Lien for "Necessaries")

9. FAIRHAVEN SHIPYARD incorporates herein by reference the allegations contained in Paragraphs 1 through 8 above with the same force and effect as if set forth at length herein.
10. The services, repairs, materials, and supplies furnished and supplied by FAIRHAVEN SHIPYARD to the Vessel in connection with her modification, repair, and storage entitled plaintiff to a maritime lien for "necessaries" against the Vessel.

WHEREFORE, plaintiff prays that this Honorable Court adjudge as follows:

1. That *in rem* process issue in due form of law, according the practice of this

Honorable Court in matters of admiralty and maritime jurisdiction, may issue against the whole of the Vessel, her engines, tackle, apparel, appurtenances, fishing licenses and fishing history, pursuant to Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure;

2. That all persons having or claiming to have any interest therein be cited to appear and answer under oath, all and singular the matter aforesaid;
3. That plaintiff's claim be adjudged a valid and enforceable maritime lien against the whole of the Vessel, her engines, tackle, apparel, appurtenances, etc., and an *in rem* judgment enter in its favor against the Vessel for the full amount of its liquidated damages, together with interest, costs, expenses of collection, including reasonable attorneys' fees, and other damages which may be shown at trial;
4. That the Vessel be condemned and sold to satisfy plaintiff's judgment; and
5. That plaintiff have such other and further relief as this Honorable Court and Justice may deem just and appropriate under the circumstances.

Dated: December 22, 2003

Respectfully submitted,

FAIRHAVEN SHIPYARD &
MARINA, INC.,
By its attorney,



Andrew B. Saunders
700 Pleasant Street
New Bedford, MA 02740
Tel. (508) 999-0600
Fax (508) 999-5400
BBO # 560645

Verification

Ronald Fortier, being duly sworn, deposes and says that:

I am Vice-President of FAIRHAVEN SHIPYARD & MARINA, INC., plaintiff herein. I have read the foregoing Verified Complaint and I know the contents thereof and the same are true to the best of my knowledge, information and belief. As to the matters therein stated to be upon information and belief, I believe them to be true. The sources of my information and the grounds for my beliefs are the financial statements and business records of the company, as well as my own involvement in negotiating the agreement with Mr. Wayne E. Frye, Jr., and attempting to collect the indebtedness owed.

Signed under the pains and penalties of perjury on this 22nd day of December, 2003.


Ronald Fortier
Vice-President

Acknowledgment

STATE OF MASSACHUSETTS:
COUNTY OF BRISTOL, ss.:

Fairhaven, MA

Then appeared before me the above-named Ronald Fortier, known to me or shown to me to be acting in the capacity claimed and who, being duly sworn, stated that he read the foregoing document, that he was authorized to execute said document, and that he executed said document as the free act and deed of said corporation on the 22nd day of December, 2003.


Elaine A. Fawcett
Notary Public
My Commission Expires: 1/30/05

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Fairhaven Shipyard + Marine, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Bristol
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

*Andrew B. Soudres
700 Pleasant St
New Bedford, MA 02740*

DEFENDANTS

To Reality In Ram

Bristol

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff

3 Federal Question
(U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity
(Indicate Citizenship of Parties in Item III)

x Adm. Rely

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

Transferred from
 5 another district
(specify)

6 Multidistrict Litigation

Appeal to District Judge from
 7 Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury – Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury – Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 550 Securities/Commodities/ Exchange	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 575 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 160 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 601 Agricultural Acts	
<input type="checkbox"/> 165 Contract Product Liability		SOCIAL SECURITY	<input type="checkbox"/> 602 Economic Stabilization Act	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 603 Environmental Matters	<input type="checkbox"/> 604 Energy Allocation Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 605 Freedom of Information Act	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	HABEAS CORPUS:	<input type="checkbox"/> 606 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 607 Constitutionality of State Statutes	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 608 Other Statutory Actions	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 260 All Other Real Property		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
FEDERAL TAX SUITS				
		<input type="checkbox"/> 700 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
		<input type="checkbox"/> 701 Empl. Ret. Inc Security Act	<input type="checkbox"/> 871 IRS – Third Party 28 USC 7809	

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

In Ram Action To Arrest Defendant Vessel/ For Non Payment of Necessaries.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23

DEMAND \$ 24,053.20

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Fairhaven Shipyard + Marina, Inc.
v. Reality (In Rem)

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Andrew B. Saunders

ADDRESS 700 Pleasant St New Bedford MA 02740

TELEPHONE NO. 508 999-0600